THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.9225 OF 1994

O R D E R

Heard the learned counsel for the respective parties.

2. This writ petition is filed for a writ of certiorari calling for the records relating to the impugned proceedings of the Revenue Divisional Officer, Markapur in proceedings No.1319/85 dated 23.6.1986 to the extent of holding that the petitioners therein are in possession of Acs.181-00 in S.No.261 of Annasamudram village and that they are entitled to ryotwari pattas, as affirmed by the Commissioner for Survey, Settlement and Land Reforms, A.P., Hyderabad in his proceedings no.VI/201/1987 dated 24.2.1994 and the consequential issuance of ryotwari pattas by the Special Deputy Tahsildar (Inams), Markapur and quash the same as being illegal, without jurisdiction and opposed to the principles of natural justice.

3. The original writ petitioner died during the pendency of the writ petition and his legal representatives were brought on record. In the affidavit filed in support of the writ petition it is stated that an extent of Acs.150-00 in paimash no.246 of Kotha Annasamudram village and Acs.120-00 in paimash nos.247 and 9 of Pata Annasamudram village were inam lands and in the year 1971 a survey was conducted and on measurement, the total extent of the said land came to be Acs.247-00 and the said extent was given new survey number as S.No.261. The Special Deputy Tahsildar (Inams) Markapur passed an order dated 5.5.1977 under Section 2-A of the A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short 'the Act') as amended under Act 20 of 1975 treating an extent of Acs.248-00 in S.No.261 as tank poramboke. The grievance of the petitioner is that no notice was given either to him or to his father before decaling the said land as tank poramboke. The respondents 5 to 43 herein filed a petition before the Commissioner under Section 14-A of the Act against the order of the Special Deputy Tahsildar and by order dated 22.7.1985 in proceedings CSS& L.Rs.Case No.V.2/72/85 dated 2.2.1985, the Commissioner remanded the matter to the Revenue Divisional Officer, Markapur to determine whether or not the land falls under Section 2-A of the Act, after giving notice to the

inamdaras. The Revenue Divisional Officer without issuing any notice to the petitioner, who is the affected party and who is in possession of the said extent, passed order dated 23.6.1986 in proceedings no.1319/85 treating an extent of Acs.181-00 in S.No.261 as inam land for which the respondents 5 to 43 are entitled to ryotwari pattas and the rest of the land in the said S.No.261 as waste land for assignment to the landless poor under normal assignment rules. Challenging the same, the Mandal Revenue Officer, Tripurantakam preferred a revision to the Commissioner under Section 14-A of the Act. The petitioner is not a party to the revision. Without giving notice to the petitioner, the Commissioner passed order in case No.VI/201/1987 dated 21.2.1994 holding that the tank has been abandoned long ago and the area has already been brought under cultivation and therefore the land in question is no more a tank poramboke and that he does not find any reason to interfere with the order of the Revenue Divisional Officer and accordingly dismissed the revision. The case of the petitioner is that his father was in possession of the said land and that he filed a suit in O.S.No.79/1955 on the file of the Subordinate Court, Kurnool against the villagers of Annasamudram village including the inamdars in a representative capacity for perpetual and mandatory injunction and obtained a decree on 16.1.1957 and the same had become final. The Judicial First Class Magistrate, Markapur in M.C.No.5/1961 dated 28.6.1981 filed under Section 145 of Cr.P.C. held that the father of the petitioner is a trespasser of the lands in an extent of Acs.150-00 and Acs.120-00 and the inamdars were not in possession of the same by the date of the preliminary order or within two months prior thereto and further held that the father of the petitioner is entitled to possession till he is evicted in due process of law and the said order has become final. As such the father of the petitioner continued to be in possession and had perfected his title by adverse possession and the petitioner had succeeded to the property as his heir and has been in continuous possession and enjoyment of the same. It is stated that the neither the father of the petitioner, nor the petitioner were evicted in due process of law. In the land records prepared on 9.4.1971 by the Assistant Director Survey, Kurnool, the father of the petitioner and his parents were shown as cultivating the said land. Therefore it is clear that the shortriumdars (inamdars) were not cultivating these lands. The shotriumdars filed T.Cs.1/57 to 64/57 before the Deputy Tahsildar, Yerragundapalem

against the father of the petitioner for fixation of fair rent and the same was dismissed on the ground that the Andhra Tenancy Act, 1956 has no application to these cases and there is no relationship of landlord and tenant after the commencement of the Act from 10.12.1956 and that lessees have acquired 2/3rd interest in the said land. The father of the petition filed suit in O.S.No.49/1970 on the file of District Munsif, Markapur against the Shotriumdas and others for mandatory injunction for removal of bunds shown as A and B in the plaint plan and the same was decreed on 21.2.1974. The inamdars filed A.T.A.No.1/74 on the file of Tahsildar, Markapur against the father of the petitioner for eviction from Paimash no.s 247 and 9 and pending the proceedings, his father died and without impleading the petitioner, ex parte orders were obtained on 26.9.1977. On coming to know the same, the petitioner preferred an appeal and the same was allowed on 30.1.1990 by the Revenue Divisional Officer, Markapur. The inamdars filed W.P.No.5476/1990 and obtained status quo order on 18.4.1990 and the same was subsequently vacated on 6.10.1990. However pursuant to the orders dated 23.6.1986 passed by the Revenue Divisional Officer, Markapur, the Special Deputy Tahsildar, Markapur granted pattas to the respondents 5 to 43 and in the appeal preferred by the petitioner to the Revenue Divisional Officer, Markapur, the appeal was allowed on 2.2.1990 vide order dated 2.2.1990 in I.A.No.2/1989. The respondents 1 to 15 and another filed W.P.No.7879/1990 questioning the order dated 2.2.1990 and this court granted status quo and even by that date, the pattas granted were already cancelled. The case of the petitioner is that the inamdaras lost their possession by being not in possession for more than 12 years and hence they cannot convey any title to the alleged vendees and they also cannot derive any title. With these averments the petitioner sought for quashing of the order dated 23.6.1986 passed by the Revenue Divisional Offier, Markapur, which was confirmed by the Commissioner through his proceedings dated 24.2.1994.

4. The 3rd respondent - Mandal Revenue Officer, Tripurantakam filed counter and while reiterating the averments in the writ petition with regard to different proceedings and the history of the land, mainly contended that the petitioners had withdrawn the writ petition against the respondents 5 to 23

and hence the writ petition is not maintainable against the other respondents. The respondent conceded to the averment of the petitioner that the order of remand was very specific to consider the validity of notification issued under Section 2(A) of the Act treating the entire extent of land admeasuring Acs.248.60 as tank Bed poranboke and hence the Revenue Divisional Officer, Markapur on remand ought not to have directed issuance of ryotwari pattas to the unofficial respondents and however the said pattas were set aside. It is stated that the Revenue Divisional Officer, Markapur has not properly considered the appeal before holding that the land admeasuring Acs.181 as Inam land and holding that the unofficial respondents are entitled for grant of pattas, as no specific findings were recorded to by the Revenue Divisional Officer Markapur while setting aside the declaration made under Section 2(A) of the Act. It is stated that the land in Sy.No.261 admeasuring Acs.248-60 cents of land situate at Annasamudram village is still recorded as Tank Bed Poramboke and still the land continues to have the character of Tank Bed Poramboke. The contention of the petitioners 2 to 4 or the contention of the original petitioner to say that they are in possession of the lands in question is false and in fact invented only for the purpose of this writ petition. The petitioners or their forefathers never made any claim for grant of ryotwari pattas under the Act and hence the writ petition is misconceived. With these averments the writ petition is sought to be dismissed.

5. Respondents 24 to 43 filed counter and written submissions and after narrating the facts of the case stated that the inamdars of Patha Anna Samudram village leased out the lands to an extent of Acs.120-00 in paimash nos.9 and 247 to Mannam Venkateswarlu, Darda Sreeramulu, Mannam Brahmaiah and Dandaa Venkata Subbaiah by way of registered lease deed dated 20.04-1955 for a period of three years and the lands in paimash no.243 to 246 was leased out to Venkata Subaiah, who is the father of the petitioner by the inamdars of Kotha Annasamudarm village. There are disputes between shortriumars and the father of the petitioner and the father of the petitioner filed O.S.No.19 of 1980 dated 26.2.1988 on the file of the Subordnate Judge, Markapur for declaration that the order of eviction passed by the Tahsildar of Markapur in A.T.A.No.1/1974 is not valid and for permanent injunction and the said suit was dismissed on 26.2.1988. It is

stated that the respondents 5 to 43 filed a petition to the Commissioner against the order treating the land to an extent of Acs.247-00 as tank poramboke under Section 2-A of the Act in Rc.No.1011/83 to the Commissioner and vide order dated 22.7.1985 the Commissioner remanded the matter to the Special Deputy Tahsildar to decide the issue by issuing notice to all the concerned and pursuant to the same, the Revenue Divisional Officer after hearing all the concerned and after personal inspection declared that an extent of Acs.181-00 in S.No.261 as inam land and these respondents are entitled to ryotwari pattas and the remaining extent was available for assignment for land less poor and the revision fled by the Mandal Revenue Officer ended in dismissal and the Commissioner, Survey Settlement and Land Records in Case No.V2/201/1987 dated 24-2-1994 confirmed the order of the Revenue Divisional Officer. The Revenue Divisional Officer while passing the impugned order has considered the entire evidence and also relying on the judgment of the Hon'ble High Court in W.P.No.2788/1976 dated 4-3-1982 came to the conclusion that the tank is abandoned long back and shortriumdars sold the lands in bits to 39 ryots for consideration and the total area sold to ryots is Acs.181-00 and they brought under cultivation and therefore, held that the ryots are entitled to ryotwari pattas and the remaining extent of land is a waste land entitled for assignment for landless poor. It is stated that the writ petitioner is not a shotriumdar and he is only a tenant in paimash no.243 and 246 and his tenancy was terminated by the legal proceedings and as such no notice is required to the petitioner. Against the order of the Revenue Divisional Officer, the petitioner has not preferred any revision before the Court of Commissioner, Survey Settlement and Land Records and without approaching the Commissioner he filed the present writ petition and hence the writ petition has to be dismissed.

6. The learned counsel appearing for the petitioner reiterating the averments made in the writ affidavit contended that as per the order of the Judicial First Class Magistrate, Markapur in M.C.No.5/1961 dated 28.6.1981 under Section 145 of Cr.P.C., the father of the petitioner though a trespasser, is in possession of the land in dispute and he was directed to be evicted in due process of law and as no due process was initiated, he has continued to

be in possession and perfected his title by adverse possession and the inamdars were not in possession of the land. The order of the Magistrate shows that the father of the petitioner was in possession of the land in dispute. Therefore, order of the Magistrate is an evidence of possession. In support of this contention, he relied on the judgment of the Apex Court in ***SHANTI KUMAR PANDA v. SHANKUNALA DEVI***[1] . Therefore, he contended that when the father of the petitioner and subsequently the petitioner are in possession of the land and hence before passing the impugned order dated 23.6.1986 the Revenue Divisional Officer, Markapur ought to have issued notice to the petitioner and as the said order was passed without issuing notice and further its confirmation by the Commissioner by order dated 24.2.1994, is illegal and violative of principles of natural justice. In support of this contention, the learned counsel for the petitioner relied on the judgments reported in ***K.HARINATH REDDY vs. INAMS DEPUTY TAHSILDAR***[2], ***SRI ANJANEYA SWAMI TEMPLE, NANDIKOTKUR v. B.LAKSHMIAH***[3] and ***A.V.N. JAGGA RAO vs. THE SPECIAL DEPTY TAHSILDAR***[4]. Relying on the judgment reported in ***SHAHAZADA BI v. HALIMABI***[5] the learned counsel for the petitioner contended that though the writ petition against respondents 5 to 23 is withdrawn, the interest of these respondents and other respondents are separable and hence withdrawal of writ petition against respondents 5 to 23 will have no effect on the maintainability of the writ petition and the relief can be granted against other respondents.

7. On the other hand the learned Government Pleader for official respondents and the counsel appearing for unofficial respondents contended that neither the father of the petitioner, nor the petitioner were in possession of the land and they further reiterated the averments made in their respective counter affidavits. They contended that whether the petitioner in possession of the land in dispute or not is a dispute question of fact and cannot be gone into in this writ petition and they sought for dismissal of the writ petition.

8. From the above averments it is clear that the land to an extent of Acs.150-00 in paimash no.246 of Kotha Annasamudram village and Acs.120-

00 in paimash nos. 247 and 9 of Pathasamudram village were the inam lands and after survey in the year 1971 the extent of the land was found to be Acs.247-00 and new survey no.261 was given. The case of the petitioner is that his father was in possession of the entire extent of the land and the petitioner is tracing the possession of the land by virtue of the suit filed by his father in O.S.No.79/1955 against the inamdars and villagers for perpetual injunction, which was decreed on 16.1.1957. The further case of the petitioner is that the Judicial First Class Magistrate, Markapur in the proceedings filed under Section 145 of Cr.P.C. held that the father of the petitioner is a trespasser and he can be evicted only in due process of law and as no eviction proceedings in accordance with law was initiated, the father of the petitioner and subsequently the petitioner continued to be in possession and perfected the tile by adverse possession. The case of the petitioner is that in the land records prepared by Assistant Director Survey, Kurnool dated 9.4.1971 the father of the petitioner and his parents were shown as cultivating the lands. His further case is that even in tenancy proceedings initiated by the inamdars against the father of the petitioner in T.Cs.No.1/57 to 64/67 ended in dismissal. The father of the petitioner also filed suit in O.S.No.49/1970 on the file of the District Munsif, Markapur against he shotriumdars and other villagers for removal of bunds and mandatory injunction and the same was decreed on 21.2.1974. Referring to various proceedings the case of the petitioner is that he is in possession of the land and is interested in the property. But the Revenue Divisional Officer before passing the impugned order dated 23.6.1986 treating the extent of Acs.181-00 in S.No.261 as inam land for which the petitioners therein, who are the respondents 5 to 23 herein and others are entitled for ryotwari pattas and the rest of the extent in the said survey no.261 as waste land for assignment to the landless poor under normal assignment rules, did not issue any notice to the petitioner. The petitioner also disputes that when the Special Deputy Tahsildar (Inams) Markpaur passed an order dated 5.5.1977 under Section 2-A of the Act treating the land to an extent of Acs.248-00 in S.No.261 as tank bund poramboke, the respondents 5 to 43 filed a petition before the Commissioner and pursuant the order dated 22.7.1985 passed by the Commissioner, the matter was remanded to determine whether or not the lands falls under Section 2-A of the Act, the Revenue Divisional Officer is not

within his jurisdiction to traverse that order and hold that the respondents 5 to 43 are entitled to ryotwari pattas.

9. At the cost of repetition the case of the petitioner is that he is in possession of the land in question and without issuing any notice the impugned orders were passed. In the counters filed by the respondent no.3 it is categorically stated that the land in Sy.No.261 admeasuring Acs.248-60 cents of land situate in Annasamudram village is still recorded as Tank Bed Poramboke and still the land continues to have the character of Tank Bed Poramboke and that the petitioners are not in possession of the land and that the same has been invented for the purpose of this writ petition. Further in the counter filed by the respondents 24 to 43 it is stated that the suit filed by the petitioner in O.S.No.19/1980 before the court of Subordinate Judge, Markapur for permanent injunction restraining the defendants i.e., inamdars for interfering with the peaceful possession and enjoyment of the schedule lands was dismissed on 26.2.1988 holding that the petitioner is not entitled to any equitable relief of injunction restraining the defendants from interfering with his possession. In view of these circumstances, there is any amount of dispute with regard to the possession of the petitioner over the land in dispute. Further the petitioner relied on the order of the Magistrate passed under Section 145 of Cr.P.C. dated 28.6.1991, as noted above, the suit filed by the petitioner was dismissed on 26.2.1988. These being questions of facts cannot be gone into by this court under writ jurisdiction. Therefore, when the possession of the petitioner over the land in question is under dispute, the question of issuance of any notice to him before passing the impugned orders cannot be gone into by this court and the judgments relied on by the counsel for the petitioner that the petitioner is entitled to notice cannot be made applicable to the facts of the present case.

10. The other important aspect that is to be considered is that by the impugned proceedings dated 23.6.1986 passed by the Revenue Divisional Officer, Markapur, which were confirmed by the Commissioner, Survey, Settlements and Land Records, Hyderabad vide proceedings dated 21.2.1994 while treating an extent of Acs.181-00 in S.No.261 as Inamd lands, it was held that the petitioners therein, who are the respondents 5 to 23 and others were entitled to ryotwari patts and the rest of the extent in the said

survey no.261 was declared as waste land for assignment to the landless poor under normal assignment rules. Therefore, it is clear that the respondents 5 to 23 are the beneficiaries of the impugned order. The writ petition against these respondents was dismissed on 28.4.2000 as withdrawn. The petitioner in this writ petition is seeking a direction of this court to call for the records pertaining to these proceedings and to quash the same. Therefore in the absence of these respondents the petitioner cannot seek the relief. The facts in the judgment of the Apex Court (5 supra) relied on by the counsel for the petitioner are quite different and in the said case, the interest of the co-defendants is separate and in the present case, the defendants 5 to 23 are beneficiaries and the writ petition against them is dismissed and, therefore, the said judgment cannot be made applicable to the facts of the present case. As the writ petition was dismissed against the respondents 5 to 23, the same cannot be maintained against the other respondents. Hence on this ground also the writ petition has to fail.

11. For the foregoing reasons, I do not find any merit in the writ petition and the same is accordingly dismissed. No costs.

AVS

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[1] 2004(1) ALD 69(SC).

[2] 2000(1) An.W.R. 380 (DB)

[3] AIR 1982 A.P. 300

[4] 1997(2) An.W.R. 112 (DB)

[5] 2004 AIR SCW 4389